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9 **UNITED STATES BANKRUPTCY COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 In re

12 LIVE OAK HOLDING, LLC,

13 Debtor.

14) CASE NO. 13-11672-LT11

15) Chapter 11

16) DECLARATION OF MATTHEW SEMMER
17) IN SUPPORT OF MOTION TO EXCUSE
18) TURNOVER BY STATE COURT RECEIVER
19) AND FOR THE APPOINTMENT OF A
20) CHAPTER 11 TRUSTEE

21) Date: January 16, 2014

22) Time:

23) Ctrm: 3

24) Honorable Laura Taylor

25 I, Matthew R. Semmer, declare:

26 1. I am the Receiver appointed by the San Diego Superior Court in Case No. 37-2012-
27 00065199-CU-MC-EC, styled as *City National Bank v. Live Oak Holding, LLC et al.* (the
28 "Receivership Action").

29 2. In addition to serving as a Receiver, I am a practicing attorney and a member of the
30 State Bar of California. I am familiar with the procedures and requirements involved in acting
31 as a Court-appointed Receiver. I have extensive experience in structuring, negotiating, and
32 managing receiverships and other workout efforts involving residential, retail, office,
33 industrial, and hospitality properties.

34 3. I was appointed Receiver on April 27, 2012, for Live Oak Holding, LLC (the
35 "Debtor") pursuant to that certain "Order Appointing Receiver After Hearing and Preliminary
36 Injunction-Rents, Issues, and Profits" issued by the Honorable Judge Joel R. Wohlfeil (with the

No. 13-13-11672-LT11

DECLARATION OF MATTHEW SEMMER SUPPORT OF MOTION TO EXCUSE TURNOVER BY STATE COURT
RECEIVER AND FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE

1 power to possess, manage and collect all rent and income from the real property defined below
2 as the Property), and have served as Receiver for approximately 18 months. The initial order
3 appointing me for the subject property located at 37820 Old Highway 80, Boulevard,
4 California 91905 commonly known as Live Oak Springs Resort (the "Property") is attached as
5 an Exhibit to my initial Receiver's Report filed in the Receivership Action attached hereto as
6 **Exhibit "1."**

7 4. On May 23, 2012, I visited the Property and met with Mr. Nazar E. Najor ("Najor"),
8 the owner and managing member of the Debtor. I conducted an initial site inspection of the
9 Property and toured the common areas. The Property includes a resort comprised of small
10 cabin-rooms, a restaurant and bar, an off-road vehicle race track (since closed), an RV Park,
11 and a mobile home park. The Property also contains a gas station and market operated by
12 commercial tenants. Najor has nearly daily contact with the residents and tenants at the
13 Property.

14 5. In addition to the resort, I learned that a water company, known as Live Oak Springs
15 Water Company, is also operated on the Property. At our initial meetings, Najor told me that
16 Live Oak Springs Water Company was a separately owned business and was not pledged as
17 collateral for the loan made by CNB and thus, in his opinion, was not part of the Receivership
18 Estate. I later learned that this was false. Indeed, I later learned that the Debtor and Najor had
19 successfully filed and prosecuted an action in the San Diego Superior Court against the County
20 of San Diego on the grounds that the Debtor was a water company that was regulated by the
21 California Public Utilities Commission ("Cal. PUC") and thus, exempt from the County's
22 ground water regulations.

23 6. As part of my initial meeting and subsequent follow-up correspondence with Najor,
24 I requested various books and records related to the Property. Najor informed me that receipts
25 generated from the Property were deposited monthly into a bank account at U.S. Bank for Live
26 Oak Enterprises, LLC ("Enterprises Account"), which I learned was a d.b.a. for the Debtor.

1 He also told me that there was a separate Wells Fargo Bank account maintained independently
2 and exclusively for funds meant for the operation of and proceeds from Live Oak Springs
3 Water Company. Based on follow-up discussions with Najor and further investigation by me, I
4 confirmed, at the time, that this Wells Fargo Bank account was inactive and held a de minimus
5 balance. I wrote a summary about my initial meeting with Najor, my follow-up interactions
6 with him and my independent investigations in my Receiver's Initial Inventory and Report,
7 which I filed in the Receivership Action on June 22, 2012. (See **Exhibit 1.**)

8 7. A few weeks after my initial meeting with Najor, I discovered that he had failed to
9 disclose to me all assets of the Property and Receivership Estate. I discovered a Live Oak
10 Holding, LLC bank account (as opposed to the Enterprise Account) at U.S. Bank ("Second
11 Account"). When I confronted Najor about the Second Account, he told me that the Second
12 Account was used exclusively by the water company. But in my review of the prior six
13 months of bank statements for the Second Account, I discovered numerous non-water
14 company related expenses that directly related to Najor personally or the operations of the
15 Debtor's other businesses, including ATM withdrawals, transfers to the Enterprises Account,
16 and expenses related to the off-road race track operated by Najor. From this, I determined that
17 the Second Account was part of the Receivership Estate, and caused a portion of the monies in
18 this account to be transferred to a receivership account. Respectful of the Cal. PUC's potential
19 involvement, I left some funds in this account in order to satisfy any legitimate near-term
20 expenses of the Live Oak Springs Water Company.

21 8. To clarify whether the Second Account and the water company was the property of
22 the Debtor, and thus, the Receivership Estate, I requested that City National Bank, the Debtor,
23 and Najor file pleadings in the Receivership Action as to their respective positions so the State
24 Court could decide the issue. By an order entered on July 17, 2012, the State Court in the
25 Receivership Action determined that income derived from the sale of water extracted from the
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1 Property, the Second Account, and a legal judgment from the Debtor's action against the
2 County were indeed property of the Debtor and of the Receivership Estate.

3 9. I, as Receiver, however, continued to refrain from operating the business of a water
4 company. Najor continued to operate that business. However, on November 30, 2102, after
5 further consideration, the State Court ruled that the water company and the Second Account
6 would no longer be considered part of the Receivership Estate.

7 10. A complete summary of the incident regarding Najor's failure to disclose to me the
8 existence of the Second Account and the personal and resort-related activity within the Second
9 Account is included in my Receiver's Report #2, a true and correct copy of which is attached
10 hereto as **Exhibit 2**.

11 11. Najor's failure to disclose the Second Account was not the only instance of his
12 failure to disclose and/or deliver cash receipts to me as Receiver. In or around June and July
13 2012, I discovered that Najor had independently engaged a track operator (without revealing
14 the receivership) and opened the off-road vehicle track without my consent as Receiver, even
15 though I specifically instructed him that he was not to operate the track unless I approved its
16 operations and had confirmed that there was appropriate insurance coverage. I also discovered
17 that Najor had misappropriated gate receipts, *i.e.*, cash, totaling over \$3,000.00 from the
18 operation of the track which he failed to disclose and deliver to me as Receiver. This activity
19 is also detailed in my Receiver's Report #2. Copies of my Receiver's Reports detailing the
20 difficulties caused by Najor's improper actions are attached hereto as Exhibits 3 through 11.

21 12. Accounting for cash proceeds remains to be difficult. I have learned that shortly
22 before this bankruptcy case was filed, the Debtor had sold numerous truck-loads of water to a
23 subcontractor doing construction at a nearby project as part of a source-capacity test in which
24 water is removed for a period of 10 days to measure the impact on supply. Based on direct
25 observation of trucks by my agents and other parties onsite, past sales and valuations conveyed
26 to me by Najor, and discussion with involved authorities, I believe the Debtor received (or
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1 would have accounts receivables of) thousands and/or tens of thousands of dollars from such
2 sale. It appears however, the bankruptcy schedules filed by the Debtor do not identify either
3 the cash or the receivable.

4 13. I have been in communication with and cooperating with the Cal. PUC because the
5 Debtor has been found to be in violation of California law and regulations concerning the
6 regulation of water companies as public utilities because the assets and business operations of a
7 water company may not be commingled with other businesses. As a result, and given the
8 complexities of the non-water company elements of the property, I believe it is in the best
9 interest of all of the creditors of the estate that a receivership be maintained for the non-water
10 company operations and that a Chapter 11 Trustee be appointed who can operate the water
11 company, arrange for a survey and separation of the legal parcels needed to operate the water
12 company from the other businesses of the Debtor, and to bring the Debtor into compliance with
13 state law.

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15 I declare under penalty of perjury under the laws of the United States of America that
16 the foregoing is true and correct, and that this declaration was executed on December 13, 2013,
17 in San Diego, California.

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